

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

CHAPTER 300 - Resources

Page | 3022

300.08 ACCESS TO RESOURCES

Unless an individual has been declared legally incompetent, he is assumed capable of managing his own affairs and his resources are considered. Competency does not affect consideration of resources.

300.08.01 INDIVIDUALS DECLARED LEGALLY INCOMPETENT

The following is applicable to individuals who have been declared legally incompetent:

Court Appointed Guardian or Conservator	No Court Appointed Guardian or Conservator
<p>If the court has appointed a guardian or conservator, resources owned by the individual are considered available.</p> <p>Seeking court approval</p> <ul style="list-style-type: none">Is not a legal restriction to the sale or disposal of the property;Does not change the property's status as a countable resource to the individual.	<p>If the court has not yet appointed a guardian or conservator, resources owned by the individual are not considered available.</p> <p>The individual does not have access to the resource until a guardian or conservator has been appointed.</p>

300.08.02 TYPES OF ACCESS

Resources are accessible through an agent, litigation or a petition-conservatorship account under SSI and liberalized resource policy:

- Access Via an Agent**

An individual is considered to have free access to, and unrestricted use of, property even when he can take those actions only through an agent, such as a representative payee or guardian.

Example: Joan Shoto receives Social Security. Her mother, Laura Shoto, is her representative payee and has Power of Attorney. The bank account is a countable resource to Joan because she has unlimited access through her mother.

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

TYPES OF ACCESS (Continued)

- **Access Only Via Litigation**

If there is a legal restriction, or a bar, to the sale or use of property, such as a co-owner legally blocks the sale of jointly-owned property, an individual is not required to undertake litigation to accomplish the sale or access. The property is not a resource under such circumstances in a month if a legal bar exists any time in the month.

Example: Shelley Lumpkin and her sister, Susan Smith, co-own a piece of property they inherited from their parents. Last year Susan took legal action to prevent Shelley from selling. Shelley is not required to enter into litigation to gain the ability to sell, so the property is not a resource to her.

- **Access Via Petition-Conservatorship Account**

Petitioning a court is different from undertaking litigation. Seeking court approval is not a legal restriction against use. Although the individual does not have access to the asset, the conservator does. Therefore, it is available for the individual's support and maintenance and is, therefore, that individual's resource. This is true despite the fact that the individual or his agent is required to petition the court to withdraw funds for the individual's support and maintenance.

The conservator will be allowed a period of time to petition the court. Once the conservator has verified a petition has been filed with the court, the regional office will follow-up to determine the outcome.